

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #01	CCRB Case #: 201904359	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 05/18/2019 2:00 AM	Location of Incident: Hinsdale Street and Sutter Avenue	Precinct: 75	18 Mo. SOL 11/18/2020	EO SOL 7/5/2021	
Date/Time CV Reported Mon, 05/20/2019 12:19 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/20/2019 12:19 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Maksim Kolesnyak	25336	958771	PSA 2
2. POM Peter Voong	12179	956323	PSA 2
3. POM Godwin Ngai	01239	954175	PSA 2
4. POM Kevin Padilla	16328	959868	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM Kevin Padilla	Abuse: Police Officer Kevin Padilla stopped § 87(2)(b)	
B.POM Kevin Padilla	Abuse: Police Officer Kevin Padilla frisked § 87(2)(b)	
C.POM Kevin Padilla	Abuse: Police Officer Kevin Padilla searched § 87(2)(b)	
D.POM Kevin Padilla	Abuse: Police Officer Kevin Padilla strip-searched § 87(2)(b)	
E.POM Godwin Ngai	Abuse: Police Officer Godwin Ngai strip-searched § 87(2)(b)	
F.POM Kevin Padilla	Abuse: Police Officer Kevin Padilla failed to provide § 87(2)(b) with a business card.	
G.POM Godwin Ngai	Abuse: Police Officer Godwin Ngai failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

Case Summary

On May 20, 2019, § 87(2)(b) called the CCRB and filed this complaint.

On May 18, 2019, at approximately 2 a.m., Police Officers Kevin Padilla and Godwin Ngai from PSA 2 stopped § 87(2)(b) at the corner of Sutter Avenue and Hinsdale Street in Brooklyn (**Allegation A: Abuse of Authority**, § 87(2)(g) PO Padilla frisked and searched § 87(2)(b) (**Allegations B and C: Abuse of Authority**, § 87(2)(g) PO Padilla and PO Ngai stripped-searched § 87(2)(b) (**Allegations D and E: Abuse of Authority**, § 87(2)(g) PO Padilla and PO Ngai failed to provide § 87(2)(b) with their business cards (**Allegations F and G: Abuse of Authority**, § 87(2)(g) § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

No arrests or summonses resulted from this incident.

§ 87(2)(b) recorded portions of this incident on his cell phone (Board Review 04). There is no BWC footage for this case.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kevin Padilla stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Kevin Padilla frisked § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Kevin Padilla searched § 87(2)(b)

§ 87(2)(b) (Board Review 01) said he went to a bodega, located at the corner of Sutter Avenue and Hinsdale Street in Brooklyn, and bought a bottle of non-alcoholic juice. § 87(2)(b) was dressed in grey hoodie and blue sweatpants, and only had his wallet and cell phone in his pockets, which did not create a bulge on his person. § 87(2)(b) saw a group of men, some of whom he knew, in front of the bodega, and engaged them in a conversation. § 87(2)(b) identified one of the men as § 87(2)(b). § 87(2)(b) did not shake hands with any of the men, nor did they exchange any items.

Approximately three minutes later, § 87(2)(b) and the men saw an unmarked vehicle, which was heading westbound on Sutter Avenue, make a U-turn and head towards their direction. § 87(2)(b) and the men all decided to leave the location because they assumed that the vehicle was a police vehicle. § 87(2)(b) said their assumptions were based on the fact that there were no other vehicles on the street. § 87(2)(b) walked westbound on Sutter Avenue alone, while the other men headed in the opposite direction. The unmarked vehicle reversed towards § 87(2)(b) direction, and pulled up in front of § 87(2)(b) on the curb of the sidewalk. PO Ngai and PO Padilla, identified via investigation, exited the vehicle and immediately grabbed § 87(2)(b) arms. PO Padilla moved his hands around § 87(2)(b) stomach and waistline on the outside of § 87(2)(b) clothing. He then reached inside § 87(2)(b) sweatpants and moved his hands around § 87(2)(b) thighs and groin area. PO Padilla grabbed and squeezed § 87(2)(b) penis and testicles in a manner that § 87(2)(b) felt was inappropriate and sexual in nature (An EDCIR report was prepared in regards, and a referral to the Kings County District Attorney's Office was generated under CCRB complaint # § 87(2)(b). § 87(2)(b) did not recall if PO Padilla or PO Ngai entered any of his pockets, nor did he recall if the officers told him why he was stopped, frisked and searched. § 87(2)(b) denied giving the officers permission to frisk or search him.

§ 87(2)(b) (Board Review 02) corroborated § 87(2)(b) account, but with the following exceptions. § 87(2)(b) said that he and his cousin, § 87(2)(b) were heading to the train station when they saw § 87(2)(b) walking on the sidewalk. § 87(2)(b) and § 87(2)(b) who have been friends for a long time, shook hands, but did not exchange any items. § 87(2)(b) and § 87(2)(b) spoke for approximately two minutes, and left in opposite directions. PO Ngai and PO Padilla approached § 87(2)(b) after he crossed to the other side of the sidewalk, and frisked and

searched § 87(2)(b) on his lower body. § 87(2)(b) and § 87(2)(b) did not hear what the officers said to § 87(2)(b). § 87(2)(b) took out his cell phone and recorded the incident. § 87(2)(b) did not know why § 87(2)(b) was stopped, frisked and searched, nor did he and § 87(2)(b) interact with the officers.

§ 87(2)(b) (Board Review 03) elected not to participate in this complaint.

§ 87(2)(b) video footage (Board Review 04) shows two plainclothes officers, PO Padilla and PO Ngai, and two uniformed officers, identified via investigation as PO Voong and PO Kolesnyak, standing around § 87(2)(b) on a sidewalk at the corner of a street intersection. § 87(2)(b) who is recording, appears to be standing on the other side of the sidewalk. It is dark outside, and there appears to be streetlights. PO Voong and PO Kolesnyak shine their flashlights towards § 87(2)(b), PO Padilla, and PO Ngai. A dark sedan, which is parked a few feet away, also illuminates the area with its headlights. At 00:04, PO Padilla slightly bends forward behind § 87(2)(b) and appears to move his hands around § 87(2)(b) buttocks on the outside of § 87(2)(b) clothing, while PO Ngai holds onto § 87(2)(b) left arm. At 00:08, § 87(2)(b) moves his body away from PO Padilla, and tells PO Padilla to stop “fondling him.” PO Padilla is standing between § 87(2)(b) and § 87(2)(b) thus is unclear from the video exactly what is happening, nor is it clear if PO Padilla reaches inside § 87(2)(b) pants or pockets.

PO Padilla (Board Review 05) said that he was seated in the front passenger seat as PO Ngai drove towards the 73rd Precinct when he saw some men, including § 87(2)(b) walking and standing on the sidewalk. PO Padilla was approximately 20 feet away when he observed the men. PO Padilla did not recall the lighting conditions on the street, but said the street was illuminated enough for him to see the men. PO Padilla did not know any of the men on the sidewalk, did not recall the crime conditions at the location, nor did he generally suspect the men of any criminality. PO Padilla also did not see the men interact with each other, shake hands, or exchange any items. PO Padilla, however, observed § 87(2)(b) who was walking on the sidewalk, holding what appeared to be a small clear Ziplock bag, equivalent to the size of a coin, containing a white rocky substance in one of § 87(2)(b) hands. PO Padilla described the white rocky substance as being akin to coarse salt, and said he had observed § 87(2)(b) for approximately less than one minute.

PO Padilla concluded that the white substance in the clear Ziplock bag § 87(2)(b) was holding was crack cocaine. PO Padilla said that his suspicion that § 87(2)(b) was holding crack cocaine was solely based on the fact that the white substance was inside the Ziplock bag. PO Padilla said that as an experienced officer, who has been involved in over 50 narcotics related arrests, had encountered situations where crack cocaine and other narcotics were packaged in similar Ziplock bags, and therefore believed that whatever substance in the Ziplock bag § 87(2)(b) was holding was narcotics and not salt or anything legal. PO Padilla thus informed PO Ngai about his observations, and decided to stop, investigate, and possibly arrest § 87(2)(b) for narcotics possession.

PO Padilla and PO Ngai approached § 87(2)(b) from the front, but PO Padilla did not see § 87(2)(b) holding anything in his hands. PO Padilla did not see § 87(2)(b) reach inside his pockets, did not see § 87(2)(b) drop anything on the ground, nor did he recall seeing any civilians walking in close proximity to § 87(2)(b). PO Padilla, however, said that he took his eyes off § 87(2)(b) for a few seconds while exiting from the vehicle, and that it was possible § 87(2)(b) might have discarded the Ziplock bag. PO Padilla looked around the sidewalk where § 87(2)(b) stood, but did not find the Ziplock bag. PO Padilla and PO Ngai informed § 87(2)(b) why he was stopped. § 87(2)(b) replied that he did not have any narcotics on his person, and said the officers could search him if they wanted. § 87(2)(b) consent was voluntary and not coerced. PO Padilla thus elected not to ask § 87(2)(b) any questions and proceeded to search § 87(2)(b). PO Padilla said that the officers ultimately did not need § 87(2)(b) consent before searching him because they had probable cause to arrest him for narcotics possession based on PO Padilla’s earlier observations, and that absent § 87(2)(b) consent, the officers would have questioned him further prior to searching him. PO Padilla said § 87(2)(b) consent only allowed them to skip the questioning and

Allegation (D) Abuse of Authority: Police Officer Kevin Padilla strip-searched § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Godwin Ngai strip-searched § 87(2)(b)

§ 87(2)(b) first said that PO Padilla and PO Ngai, while searching him, ordered him to lower his sweatpants and undershorts. § 87(2)(b) complied and was naked from his waist down to his legs. § 87(2)(b) however, later said that he did not recall being instructed to lower his pants and undershorts, but that all he remembered was that his pants were lowered, and he was naked on the street.

§ 87(2)(b) acknowledged seeing § 87(2)(b) lower his sweatpants and undershorts while the officers searched him, but did not know if the officers instructed § 87(2)(b) to do so, nor did he know why § 87(2)(b) lowered his pants.

The cell phone video at 00:10, shows § 87(2)(b) sweatpants slightly lowered beneath his waist, and he appears to be wearing long red athletic undershorts underneath his sweatpants. It is unclear from the video how § 87(2)(b) undershorts was exposed. PO Padilla, however, appears to be moving his hands around § 87(2)(b) buttocks on the outer layer of § 87(2)(b) undershorts. At 00:11, § 87(2)(b) turns and faces PO Padilla, PO Ngai, and PO Kolesnyak, and adjusts his sweatpants back to his waist level. § 87(2)(b) then appears to speak with the officers, but what is said is not captured in the video. At 00:20, § 87(2)(b) appears to be loosening something around his waistline, while the officers stand around him and observe. At 00:22, the camera pans slightly away from § 87(2)(b) and the officers. At 00:31, the camera pans back towards § 87(2)(b) and the officers, and captures § 87(2)(b) lowering both his sweatpants and undershorts towards his legs. § 87(2)(b) then straightens up and places his two hands in front of his groin. § 87(2)(b) buttocks, thighs, and legs are, however, exposed on the street. At 00:37, § 87(2)(b) pulls his pants back up towards his waist, and says to the officers, "I told you I don't have anything."

PO Padilla denied suspecting that § 87(2)(b) hid the alleged narcotics inside his pants, and did not recall moving his hands around § 87(2)(b) undershorts. PO Padilla did not recall seeing § 87(2)(b) undershorts exposed, nor did he recall how § 87(2)(b) undershorts was exposed. PO Padilla said that § 87(2)(b) unexpectedly lowered his pants during the search, and that at no point was he instructed to do so by the officers. PO Padilla did not know why § 87(2)(b) lowered his pants, and said the officers immediately instructed him to pull them back towards his waist.

Neither PO Ngai, PO Kolesnyak, nor PO Voong, recalled seeing § 87(2)(b) undershorts exposed, nor did they recall seeing § 87(2)(b) lower his sweatpants and undershorts. They also did not recall hearing any of the officers instruct § 87(2)(b) to lower his pants.

A strip-search is any search in which a person's undergarments, e.g. underwear, and/or private areas are exposed or in which the person's clothing is removed, lifted up, or pulled down to expose undergarments or private areas. Strip-searches may only be conducted with the approval and knowledge of a supervisor, and must be conducted in a secure area, in utmost privacy. Patrol Guide Procedure 208-05 (Board Review 21).

The video evidence shows § 87(2)(b) undershorts partially exposed while PO Padilla searched him, but it is unclear how the undershorts were exposed. The video also shows § 87(2)(b) lowering his undershorts and sweatpants causing him to be naked, but again it is unclear if § 87(2)(b) voluntarily did this or was instructed by the officers to do so. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Kevin Padilla failed to provide § 87(2)(b) with a business card.

Allegation (G) Abuse of Authority: Police Officer Godwin Ngai failed to provide § 87(2)(b) with a business card.

It is undisputed that PO Padilla and PO Ngai did not provide § 87(2)(b) with their business cards.

PO Padilla said he was not required to give § 87(2)(b) a business card because the interaction with § 87(2)(b) amounted to a “Level Four” encounter, and that officers were only required to give their business cards during “Level Three” encounters.

PO Ngai did not recall why he did not give § 87(2)(b) his business card.

A business card is to be offered for a law enforcement activity, including stops, frisks, and searches of persons, except in cases when a summons is issued, or an arrest is made. NYC Administrative Code 14-174 (Board Review 12).

Given that § 87(2)(b) was not arrested or summonsed as a result of this incident, PO Padilla and PO Ngai were required to give him their business cards, but failed to do so. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]

○

§ 87(2)(b)

- PO Padilla has been a member-of-service for four years and has been a subject in five CCRB complaints and 10 allegations. Three of these complaints are currently pending investigations, while the remaining two were closed with no substantiations.
- PO Ngai has been a member-of-service for seven years and has been a subject in seven CCRB complaints and 15 allegations, none of which were substantiated. § 87(2)(g)
- PO Kolesnyak has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Voong has been a member-of-service for six years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.

• § 87(2)(a)

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date